

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****WRIT PETITION NO.369 OF 2026**

Prashant Suryakant Malusare and Ors.

.... Petitioners.

V/s

The State of Maharashtra and Ors.

.... Respondents.

Mr. Pragya Mishra, advocate for the petitioners.

Mrs. M.M. Deshmukh, I/C. P.P. with Mr. K.V. Saste, Addl. P.P. for
the respondent nos. 1 to 3.

**CORAM : SHREE CHANDRASHEKHAR, CJ &
GAUTAM A. ANKHAD, J.**

DATE : 18TH FEBRUARY 2026

Per, Shree Chandrashekhar, CJ.

The petitioners have made following prayers:-

“[A] That this Hon’ble Court may be pleased to issue a writ of mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India r/w. Sec. 528 of B.N.S.S., 2023 directing the Respondent Police [Mumbai Police Crime Branch] to forthwith register a First Information Report [F.I.R.] on the basis of the Petitioners’ written complaint submitted on 23.12.2025 [annexed as EXHIBIT-E] regarding the cognizable offences of criminal trespass, assault, robbery, theft and other offences committed on 21.12.2025 at the Petitioners’ business premises and to direct Mumbai Police Crime Branch, to proceed with a thorough investigation expeditiously.

(B) That this Hon’ble Court may be pleased to issue a writ of mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India r/w. Sec. 528 of B.N.S.S., 2023 ordering that the investigation be conducted under the supervision of this Hon’ble Court, directing the appointed investigating officer / Crime Branch to submit periodic progress reports to this Hon’ble Court detailing the steps taken in the investigation, findings made etc. by monitoring the investigation as deem fit, in order to ensure that the inquiry remains on track and unbiased, until the conclusion of the investigation.

[C] That this Hon'ble Court may be pleased to issue a writ of mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India r/w. Sec. 528 of B.N.S.S., 2023 directing to protect and preserve the Petitioners' evidence, by securing the premises in question, preserve CCTV footage and other evidence of the 21.12.2025 incident, and to ensure that the Petitioners and witnesses are not threatened or harmed by the accused persons during the investigation.

[D] Ad-interim, interim reliefs in terms of Prayer Clause [C] hereinabove may be granted in favour of the petitioners.

[E] Pass such other and further orders as this Hon'ble Court may deem just, fit and necessary in the interest of justice."

2. This is the case of the petitioners that they are the licensees of a guest house and a shop and were operating under the name and style of "Hotel Platinum Inn" situated at Grant Road, Mumbai. They state that they are the lawful licensees of the subject premises operating under a valid leave and license agreement and are conducting their business peacefully. They have made allegations against the licensors that they transferred the subject property without disclosing to them that the said property had major structural, internal and technical faults and was not fit for use or to reside in and is in a dilapidated condition. Therefore, they received notices from the Municipal Corporation and the Health Department and lock and seizure actions have been undertaken and the said property has been subjected to various difficulties including but not limited to supply of water, shortage of basic amenities and, thus, overall poor business. The petitioners alleged that on 21st December 2025, the licensors along with other persons dispossessed them by use of force and have resorted to physical violence.

3. Mr. Pragya Mishra, the learned counsel for the petitioners submits that the petitioners are constrained to approach this Court by filing this writ petition under Article 226 of the Constitution of India read with section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 for the reason that if the petitioners file petition under section 156(3) of Criminal Procedure Code corresponding to section 175(3) of Bharatiya Nagarik Suraksha Sanhita, 2023, the matter shall again go before the same police station. Another argument of the learned counsel is that the State cannot discriminate against the petitioners by refusing to register a First Information Report. The learned counsel for the petitioners has relied upon the decision in the case of *“Lalita Kumari v. Government of Uttar Pradesh & Ors.”* (2011) 11 SCC 331.

4. The apprehension that the matter shall be investigated by the same police if the petitioners file a complaint case is self-contradictory inasmuch as the petitioners themselves are seeking directions to the Mumbai Crime Branch for investigating the matter. Any order passed by the Court for transfer of investigation to another agency causes serious prejudice against the police force and dampens the morale of the police force. That is the reason the writ Court shall not pass any order for transfer of case to another agency or investigation to be conducted by another agency. The import of the decision in *“Lalita Kumari”* cannot be applied *de hors* the facts of the case. The petitioners have an adequate remedy under the Criminal Procedure Code by filing a complaint case against the proposed accused persons and leading evidence

thereon. The learned counsel for the petitioners, however, states that the petitioners may not be in a position to produce evidence. However, on such grounds the writ petition shall not lie.

5. Writ Petition No.369 of 2026 is dismissed.

[GAUTAM A. ANKHAD, J.]

[CHIEF JUSTICE]

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Date: 2026.03.06
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